

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Bail Appl..No. 6298 of 2007()

CMP.2264/2007 of MUNI-MAGI.COURT,PONNANI

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: PETITIONER/ACCUSED

1. JABIR, S/O MOHAMMED,
PULINKUNNATHU HOUSE, NARANIPUZHA P.O.,
PIDAVANNUR, ACCOUNTANT, BEAUTY SILK,
EDAPPAL.
2. SANAL, S/O BALAN,
ELIYAPRA HOUSE, NADUVATTAM AMSOM DESOM,
COMPUTER OPERATOR, BEAUTY SILK, EDAPPAL.
3. RAFI, S/O MUHAMMAD,
KOTTELIL HOUSE, P.O.KALADY,
KANDANAKAM.
4. SHAMEEM, S/O HASSAN,
ATHANITHARAYIL HOUSE, MANGATOOR,
P.O.PERUMBARAMBU,
5. THAJUDHEEN, S/O ISMAYIL
POOVATHUPRAMBIL HOUSE, P.O.ANAKKARA,
PALAKKAD DISTRICT.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: STATE & COMPLAINANT

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.
2. THE DY. SUPERINTENDENT OF POLICE,
TIRUR.

BY PUBLIC PROSECUTOR
SRI.R.JAYACHANDRAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.6298 of 2007

Dated this the 17th day of October 2007

O R D E R

Application for regular bail. The petitioners are accused 1 to 5 in a crime registered for offences punishable inter alia under Section 308 I.P.C. The facts of the case are disturbing. It must persuade the members of a refined and civilized community to hang their heads down in shame. Two women, one of them pregnant, were suspected to be involved in the commission of theft. A crowd of local people allegedly attempted to deliver instant criminal justice, it is alleged. They allegedly attacked the two women, attempted to outrage their modesty by disrobing them allegedly to find out whether any stolen property is hidden. It is further alleged that ignoring the cries of the victims, one of whom was pregnant and one of whom was having a child with her, they were beaten black and blue. They could be saved ultimately only when the police party on information came to the scene and tried to rescue them. They were taken to the local hospital. They were admitted with injuries. One of them allegedly escaped while she was undergoing treatment as in-patient. The incident appears to have attracted media coverage. That helped the police to easily proceed further in the investigation of the crime. Video recordings of the events were available with a local videographer.

The police have seized the same also. This had helped them considerably in the conduct of the investigation. The police have identified ten persons as the persons, who along with others, constituted the unlawful assembly and indulged in the culpable overt acts. The petitioners were arrested and produced before the learned Magistrate on 8/10/2007. They continue in custody from that date. Accused 6 to 10 are reported to be absconding. They are not available for arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The media appears to be playing havoc. Because of the coverage by the sensation mongering media, the police is compelled to act to satisfy the public outcry. In that attempt, they are ignoring the facts and truth and making reckless and wild allegations against the petitioners. In these circumstances, it is prayed that the petitioners may be granted regular bail.

3. The learned counsel for the petitioners submits that in any view of the matter, the allegation under Section 308 I.P.C is not justified at all. The petitioners do not deserve to continue in custody any longer. They may be released on bail subject to any appropriate conditions, submits the learned counsel for the petitioner.

4. The learned Director General of Prosecutions, who has himself appeared in this case, opposes the application. The learned

Director General of Prosecutions submits that the allegations do constitute an offence punishable under Section 308 I.P.C. A holistic and exhaustive consideration of the materials is necessary. It is not the actual injuries inflicted which can be reckoned as be all and end all in a case like this at this early stage. The dangerous trend of crowds taking law into their own hands and attempting to administer instant criminal justice is raising its ugly head in the Kerala context also. Refined societies and communities in which there is rule of law must frown upon such attempts. Though such attempts may be manifestation of the dissatisfaction of even the right thinking members of the community against the inadequacy of the criminal justice delivery system, such attempts deserve to be and must be frowned upon. The attitude to the crime shown in this case must emphatically convey that a refined society must not and shall not tolerate this. The learned Director General of Prosecutions in these circumstances prays that the petitioners may not be granted bail at this stage. There is nothing at the moment to conclude that the offence under Section 308 I.P.C is not made out. The nature of the attack, the nature of injury suffered, the manner in which the victims were saved of further damage, must all be borne in mind by the court while deciding the question whether at this stage can be inferred that the offence under Section 308 I.P.C has been committed, submits the

learned Public Prosecutor.

5. At this early stage of investigation, I shall not embark on a detailed and hairsplitting discussion as to whether the allegations are acceptable and whether the data collected are credible. While considering an application for regular bail, the court has to advert to various circumstances. The nature and gravity of the offence alleged, the abhorrence with which the civilized society views the crime, the stage of investigation, the quantum and quality of the data collected must all be taken into account. Suffice it to say that on an anxious consideration of all the relevant inputs, I am satisfied that the petitioners are not entitled to be enlarged on bail at this stage.

6. The disapproval of this court against the nature of the crime must get reflected in the order passed. I take the view that the petitioners are not entitled for bail at this stage.

7. In the result, this petition is dismissed. However, I may hasten to observe that the petitioners shall be at liberty to move this court for bail again at later stages of the investigation not, at any rate, prior to 26/10/2007. I expect the investigating officer to expeditiously complete the investigation.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007